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## **THE SPIRIT OF CONSTITUTIONALISM: AN ESSENCE**

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# The Spirit of Constitutionalism: An Essence

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**Abstract –** *The preamble of Indian Constitution is a mirror to the constitutional spirit. It implicates the concepts of secularism socialism, Justice, equality and liberty and the ultimate aim is fraternity which the country has to achieve with the enforcement of the constitutional provisions. We remain under the foreign rule for a long span of time. Just after independence it was very crucial to make the high level effort to establish a just and fundamental freedom and move on the path of development. So, some legal and constitutional guidelines were required for the same. This need and spirit was imbibed in the constitution and this very spirit of equality, Justice, liberty, secularism, socialism, fraternity, separation of powers, theory of check and balances, theory of guided powers, positive morality, Non-violation of the basic structure is called constitutionalism.*

**Key-Words :** *Constitutional provisions, Constitutional guidelines, preamble, Fundamentals Rights, Fundamentals Freedom.*

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The constitution of India is the supreme law of the land. As given by H.L.A. Hart, It is the ground norm in our country. The preamble of Indian Constitution is a mirror to the Constitutional spirit. It implicates the concepts of secularism socialism, justice, equality and liberty and the ultimate aim is fraternity which the country has to achieve with the enforcement of the Constitutional provisions. We remain under the foreign rule for a long span of time. Just after independence it was very crucial to make the high level effort to establish a just and equitable pattern of society in which the citizens can enjoy the fundamental freedom and move on the path of development. So, some legal and constitutional guidelines were required for the same. This need of spirit was imbibed in the constitution and this very spirit of equality, justice, liberty, secularism, socialism, fraternity, separation of power, theory of check and balances, theory of guided powers, positive morality, Non- violation of the basic structure is called Constitutionalism. So, Constitution is not a mere written statue. It not an unlively document rather it is bearing some essential values and principle which are very crucial for the establishment of a just and equitable society.

The term Constitution implies the written provisions of the constitution. In its wider Connotation it includes the practice and conventions as part of the constitution. In other words if there is violation of the practices/Convention then it can be redressed by the court of law. The term Constitutionalism implies the object behind the written Constitution. The Idea of Constitutionalism implies that the constitution should not merely a static document rather it should always be at work.

It is further reiterated in “**I.R Coelho Vs. State of T.N.”(2007)**. “The idea of constitutionalism is based upon the supremacy of the constitution and this idea itself means that there have to be checks and balances within the constitution upon the government”

In “**B.R. Kapoor Vs. State of T.N. and another “(2001 Sc)** “The concept of positive morality was originated. It was held that the Constitution contains apart from certain written provisions some silence with respect to some situations or circumstances and in such situations it is a Constitutional duty and positive morality on part of any government functionary to act in line with the spirit of the constitution”

In “**M. Nagraj Vs. UOI” (2006 Sc)**. “It was held that Supreme Court is not only bound by the written text of the Constitution rather it is bound by the essence of the constitution. Its fedality is with the basic structure of the constitution and therefore the court may interpret the written provision in such a manner that these written provisions can be more effective in furtherance of the constitutional goals.

In “**Ashok Kumar Thakur Vs. UOI” (2008 Sc)**. “These points were reiterated by the court”. So, it can be concluded from the above mentioned Judgements Tha the spirit behind the Constitutional provisions is called the idea of Constitutionalism. If one has a glance on the Constitutional provisions then from the Preamble itself the idea of Constitutionalism is

inherent in the written provisions. Some of such provisions are enumerated as follow :-

## PREAMBLE

Preamble as having the Concepts as to Constitute India as a Sovereign, Socialist, Secular, Democratic, Republic. So, this is the shape of face of Indian State or the Characteristics of a just Indian Society. Further it is to secure its citizens Justice, Equality, Liberty for the Promotion of Fraternity, thereby assuring the Unity and Integrity of the Nation. Preamble is having 85 words and the whole Constitution is summarized in the preamble. The preamble to the Indian Constitution was passed upon the third reading only after the constitution was passed. There was a controversy amongst the Constituent assembly regarding this fact because it is considered as the summary of the Constitution so it was passed only after the passing of the constitution. So, each and every word used in the preamble is having its own significance like the word written in the preamble is justice social, economic, and political. So, this sequence is very deliberate because without social justice, economic justice is futile and without economic justice, political justice is not having any value. All these provisions ultimately having one goal that the Fraternity i.e. mutual respect amongst the citizen. India is a country of Unity in Diversity. We are having different cultures, languages, regional diversifications. So, Religion, Caste, Race, languages are the divisive forces in India. The concepts of Unity, integrity are given prime focus in the Preamble. To adopt the Constitution does not mean simple adoption of the document rather to adopt the values of the constitution as such.

In “**Keshavanand Bharati Vs State of Kerla**”. “It was held that preamble of the constitution is a part of the Constitution”. The concept of socialism is imbibed in the Preamble to do away with the inequalities and to guarantee equal status and upliftment to every stratum of the society.

The idea of secularism implies state neutrality in the field of Religion. Indian Secularism has to be seen in its own light Independent of any idea of Western Secularism. In India we are not having a uni-religions society rather a pro-active role is required on the part of state to create religious harmony amongst its, only then the object of Fraternity as an ultimate goal enshrined in the Preamble can be achieved. Secularism has been a way of life in India and it very deep-rooted and internal to the Indian society. So, to promote religious tolerance and mutual respect and to curb the situations of religions apathy the pro-active role of the state is very essential.

In **A.S Narayana Vs. State of A.P**”. (1996 Sc.), “It was held that the term Secularism implies:-

- (A) Reduction of the religious Complexities adversely affecting the other religions

- (B) By Controlling the Non-religious activities.

- (C) By promoting the secular values in the society

In “**Lata Singh Vs. State of Utter Pradesh**”,(2006 Sc) “ While declaring the Inter-Caste marriage as Constitutional the Hon’ble Supreme Court held that caste barriers in societal interactions are anti-secular. Inter caste marriages shall be promoted, protected and conserved by the state of promote greater secular value.”

So, in India Secularism is a way of life. Religious tolerance is very significant for peaceful Co-existence of a multi religious Society.”

## FUNDAMENTAL RIGHT AND DIRECTIVE PRINCIPLES OF STATE POLICY; COMPLIMENTARY NOT CONTRADICTORY

Fundamental rights are the inalienable right of the Citizens. So, in a democratic set-up it’s the duty of the state of protect these right from the power of the state as well as from the unnecessary enrichment from the power of individuals. They secure the basic taints of a good life to the individuals. These rights are directly enforceable by Virtue of Article 32 and 226 of the constitutions. These rights would have been ineffective had they not been made directly enforceable through Article 32 through the Supreme Court.

To complements the fundamentals right the provision of directive principle of state policy is there under the Constitutions. As in the fundamental right the directive principles are not intended to curtail the state action rather it is intended to make the state act. So, it requires a pro-active action on the part of the state. Article 37 provides that directive principles of state policy are not enforceable as the Fundamental Rights. Buts this fact does not undermine the Constitutionality of the directive principles rather they are fundamental in the governance of the country and a duty is casted upon the state to apply these principles while making Laws. So, it’s a Constitutional duty and in any Circumstances it should not be violated by the state. If it is violated then the supreme Court can compel the state to fulfill this duty.

## BASIC STRUCTURE OF THE CONSTITUTION

The concept of Basic structure was discussed elaborately in the case of “**Keshavanand Bharti Vs. State of Kerala and another**”,(1973 Sc), “It was held in this case that the Constitution is not to be interpreted like any other enactment rather is has to be interpreted in light of the purpose and spirits of the constitution. So, it is a very crucial aspect of the theory of Constitutionalism.

Basic structure is the foundation upon which the constitution is based. Constitution is not a mere statutory law rather it is having some basic features and values which is leading the society towards a

particular path of development. Neither these values nor goals can be taken away from the constitution. Indian Constitution is a written constitution but it is having the provisions of the amendment within itself as the society is not static, it is progressive and the law has to be amendment as an ordinary statute. But the values, goals and principles for which the provisions of the constitution have been created cannot be taken away in any circumstances. This is called the basic structure. Any such feature which if taken away would result into the failure of such values, goals or loss of fraternity and thereby consequential loss of the Unity and integrity and dignity of individual would be called a part of basic structure. So, this is the criteria for amendment and to decide whether a particular provision is part of basic structure or not.

The idea of basic structure cannot be given a precise definition, but this does not mean that it is a vague doctrine. It is implicit within the Constitution itself. So, what constitute the basic structure of the Constitution is a Question of fact which has to be examined in light of the other provisions of the Constitution and the Supreme Court has laid down this criteria in the present case and held that the provisions which state the values, principles and goals of the Constitution are part of the basic structure and cannot be taken away in any Circumstances. So, the spirit of Constitutionalism was given great emphasis in this leading case and because of this spirit India constitution is called a Sacrosanct document which leading the Indian society to a Particular direction where fundamental freedom are for the citizens and mutual respect for each other.

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